Supreme Court, U.S.
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92-1869

IN THE
SUPREME COURT OF THE UNITED STATES
October Term,1992
(RECORD #)

WALTER H. BULLWINKLE
Petitioner

v.

STATE OF ALASKA
Respondent

ON THE WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI

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The questions presented for review are:

1. Under the provisions of RS 2477 (43 USC 932) could the proffered right-of-way grant be accepted by Act of the Alaska Territorial Legislature Chapter 19 SLA 1923 with no actual or even planned road construction.

2. While Section 9 of the Alaska Organic Act (48 USC Sec. 77) prohibited the Alaska Territorial Legislature from interfering with the primary disposal of the soil, did it confer sufficient power to dedicate and reserve to itself easements along all section lines in Alaska before physically possessing the land by constructing a public road or trail?

3. Under the provisions of RS 2477 could the right-of-way grant be exercised on private land, when the first act of physical appropriation occurred more than forty years after the land was conveyed from Federal ownership and more than fifty years after the land was segregated from public land status and ten years after RS 2477 was revoked in 1976 by FLPMA.

Reference is made to the Secretary of the Interior's defeat of the attempt to install section line easements in Washington State (25 I. D. 466 1898). The Amicus Curiae Brief of the United States prepared by the Justice Department for the Greenhouse Case (A 85-630) in 1986. Alaska Attorney General's Opinion #11, 1962. Alaska Attorney General's Letter to the Corps of Engineers (App. Page 19 to Page 22).

THE JUDGMENT of the Ninth Circuit was entered on February 22, 1993.

TITLE 28 USC SECTION 1254 confers jurisdiction to review the judgment by writ of certiorari if filed within 90 days of the final decision.

AMENDMENT FIVE states "Nor shall private property be taken for public use without just compensation."

AMENDMENT FOURTEEN states, "Nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law."

Statement of the Case:

Congress in RS 2477 offered a grant of right-of-way for construction of public roads (43 USC Sec. 77). The Territory exceeded the scope of the powers granted by Congress and passed Ch. 19 SLA 1923 which dedicated and reserved to itself easements along all section lines in Alaska. This resulted in a significant expansion of scope of the acceptance provisions of the offered right-of-way grant by deleting any physical act of appropriation and ignoring the topographic limitations of road construction. (App. Page 13 to Page 14)

Since 1923, the Territory and subsequently the State of Alaska has used this erroneous dedication and reservation to defeat land titles earned under the Federal Homestead Act of 1862. The Courts of Alaska have consistently protected the State in this matter, and the State has prevented the issue from being heard by Federal Courts by either refusing to become a party to a suit between third parties (Alaska Greenhouse, Inc. vs. Municipality of Anchorage, et al, (A 85-630) or hiding behind the 11th Amendment which

bars Federal courts jurisdiction over cases brought to recover damages from the State.

Since the Territory and subsequently the State has never exercised this dedication and reservation against the Federal government, the Federal government has never been a party to suits on the matter.

Alaska's Superior Court confirmed the section line easement and gave the State the easement by summary judgment. The Federal District and the Ninth Circuit Appeals Court had to give full faith and credit to Superior Court's decision even if erroneous. Title 45 U.S.C. 1701 and Title 28 U.S.C. 1291 are the basis respectively for jurisdiction of the District Court and the Ninth Circuit Appeals Court. (App. Page 1 to Page 11)

The State has obfuscated the matter by consistently holding that the existence of an RS 2477 right-of-way grant is a matter of State Law, while the real issue remains that of interpretation of Federal Law to ascertain the clear intent of Congress as to the need for physical appropriation of public lands as the necessary act of accepting the RS 2477 grant offer. (App. Page 13 to Page 14)

ARGUMENTS:

1. Plain reading of RS 2477 shows that physical appropriation of the public land is a necessary element of acceptance of the proffered grant. (App. Page 13 to Page 14)

2. The Alaska Organic Act prohibited the Territory from interfering with the primary disposal of the soil.

3. RS 2477 was revoked by the Federal Land Policy & Management Act in 1976, and Act of 1923 by the Territory in 1949.

4. Section line easements are exercised only against private ownership derived from the 1862 Homestead Act and other Federal Settlement Acts.

5. The impression of section line easements on private land conveyed by Federal patent constitutes a collateral attack on the Federally granted land title, rather than the direct proceeding as required. (App. Page 20 to Page 21)

6. The section line easement myth is perpetuated by:

a. The State refusal to become a party to third party suits.

b. Initiating condemnation proceedings and awarding only token land values and then claiming Article 11 as a defense to limit Federal Court jurisdiction.

c. Careful avoidance of exercising the section line easement across Federally managed lands, thus precluding a Federal challenge.

It was never Congress intent to offer a future speculative grant without regard for current needs and topographic feasibility nor to cloud the land titles forever that Congresss offered under the Homestead and Alaska Settlement Acts.

Walter H. Bullwinkle prays for a writ and a favorable decision either by per curiam decision based on the briefs or by granting a writ of certiorari.

Respectfully submitted,

Walter H. Bullwinkle

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